



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2013

Mr. Gerard A. Calderon
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2013-01178

Dear Mr. Calderon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 476827.

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for the police reports; arrest reports; offense reports; investigative reports and/or memorandums; photographs; complaint and witness statements; pre-trial reports and evaluations; post-trial reports and evaluations; pre-sentencing investigation reports; post-sentencing reports; trial and hearing transcripts; and correspondence to and from the district attorney's office pertaining to a specified case. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted by the requestor. *See Gov't*

¹Although you also raise section 552.101 of the Government Code, you have not presented arguments explaining how this exception applies to the submitted information. Accordingly, we do not address your assertion of section 552.101. *See Gov't Code §§ 552.301(e)(1)(A), .302.*

²We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the district attorney's office did not comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The requestor states she sent her request for information via facsimile to the district attorney's office on September 16, 2012, and provides a copy of a confirmation that the facsimile was sent. You inform us the district attorney's office received the request from this requestor via facsimile on October 27, 2012. You state October 27, 2012, was the first and only time the district attorney's office received the request. The determination of the date the district attorney's office received the request for information is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, we must accept the district attorney's office's representation that it received the request for information on October 27, 2012. Accordingly, the tenth business day was November 12, 2012. We note the district attorney's office submitted its request for a ruling from this office in an envelope postmarked November 9, 2012. *See* Gov't Code § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Therefore, we conclude the district attorney's office complied with the requirements of section 552.301 of the Government Code. Accordingly, we will consider the district attorney's office's arguments against disclosure of the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

See id. § 552.108(a)(4). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's office's "entire litigation file" was "too broad" and "the decision as to what to include in [the file], necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Id.* at 380 (quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding).

You inform us the instant request for information is for the district attorney's office's entire file on a criminal case. You state the submitted information "relates to the detection, investigation and prosecution of criminal activity and was collected and prepared by the [d]istrict [a]ttorney's [o]ffice solely for the purpose of pursuing criminal litigation." The requestor argues her request was not for the district attorney's office's entire file. However, the requestor seeks the police reports; arrest reports; offense reports; investigative reports and/or memorandums; photographs; complaint and witness statements; pre-trial reports and evaluations; post-trial reports and evaluations; pre-sentencing investigation reports; post-sentencing reports; trial and hearing transcripts; and correspondence to and from the district attorney's office pertaining to the case at issue. Thus, we find the requestor essentially seeks the district attorney's office's entire litigation file. Accordingly, based on your representations and our review, we agree that section 552.108(a)(4) is applicable to the submitted information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 476827

Enc. Submitted documents

c: Requestor
(w/o enclosures)